

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

BENJAMIN BETHEA,

Plaintiff,

v.

Lieutenant CONFER, *et al.*,

Defendants.

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CIVIL NO. 3:CV-08-0263

(Judge Caputo)

ORDER

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

Plaintiff Benjamin Bethea, an inmate currently confined at the Greensburg State Correctional Institution ("SCI-Greensburg") in Greensburg, Pennsylvania, initiated this action *pro se* by filing a Complaint pursuant to the provisions of 42 U.S.C. § 1983.

Presently pending is a Motion to Dismiss Plaintiff's complaint pursuant to Fed. R. Civ. P. 12(b)(6) filed on behalf of Defendants Confer, Davis, Reese, Condo, Butler, Kwisnek, Lockett, Wolanin, and Novitsky. (Doc. 14.) A supporting brief was filed on May 28, 2008. (Doc. 16.) Although Plaintiff's brief in opposition to the motion is overdue, he has neither filed his opposition nor requested an extension of time in which to do so.

A dispositive motion generally may not be granted merely because it is unopposed. Since Local Rules of Court must be "construed and applied in a manner consistent with the Federal Rules of Civil Procedure," *Anchorage Assoc. v. Virgin Islands Board of Tax Review*, 922 F.2d 168, 174 (3d Cir. 1990), the disposition of an unopposed motion ordinarily requires a merits analysis. The United States Court of Appeals for the Third Circuit has stated, however, that Middle District of Pennsylvania Local Rule 7.6 can be

applied to grant a motion to dismiss without analysis of the complaint's sufficiency "if a party fails to comply with the rule after a specific direction to comply from the court."

Stackhouse v. Mazurkiewicz, 951 F.2d 29, 30 (3d Cir. 1991).

Middle District of Pennsylvania Local Rule 7.6 provides that if a party fails to file an opposing brief within fifteen (15) days after service of the movant's brief, the motion will be deemed unopposed. However, in fairness to this *pro se* litigant, the court will grant additional time for Plaintiff to respond to Defendants' Motion, and direct him to file a brief in opposition within fifteen (15) days from the date of this Order. If Plaintiff fails to oppose the Motion or otherwise communicate with the court within fifteen (15) days of the date of this Order, the court will grant the Motion as unopposed without a merits analysis under the authority of *Stackhouse*.

**NOW, THEREFORE, THIS 5th DAY OF AUGUST, 2008, IT IS HEREBY ORDERED
AS FOLLOWS:**

1. Within fifteen (15) days from the date of this Order, Plaintiff shall file a brief in opposition to the Motion to Dismiss filed on behalf of Defendants Confer, Davis, Reese, Condo, Butler, Kwisnek, Lockett, Wolanin, and Novitsky. (Doc. 14.)

2. If Plaintiff fails to file an opposition brief, the court will deem the motion unopposed under M. D. Pa. L. R. 7.6, and the motion will be granted without a merits analysis. See M. D. Pa. L. R. 7.6; *Stackhouse v. Mazurkiewicz*, 951 F.2d 29, 30 (3d Cir. 1991).

s/ A. Richard Caputo
A. RICHARD CAPUTO
United States District Judge